

ORDINANCE NO. 09-102

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA REPEALING AND RESCINDING THE EXISTING LANGUAGE OF CHAPTER 42 ENTITLED "FLOODS AND WATER MANAGEMENT", ARTICLE II, FLOOD DAMAGE PREVENTION, OF THE CODE OF ORDINANCES OF THE CITY OF HIALEAH, FLORIDA AND REPLACING THE EXISTING LANGUAGE WITH A NEW ARTICLE II, FLOOD DAMAGE PREVENTION, OF CHAPTER 42 PROVIDING REGULATIONS AND LANGUAGE THAT ARE PATTERNED AFTER THE MODEL ORDINANCE PROVIDED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA); REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Federal Emergency Management Agency (FEMA) has recently issued new Flood Insurance Rate Maps, effective September 11, 2009; and

WHEREAS, this ordinance is intended in general to benefit the health, safety and public welfare of the City and its residents; and

WHEREAS, the specific purpose and intent of this ordinance is to adopt language that is patterned after the model ordinance that FEMA has directed local governments to utilize.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: Chapter 42 entitled "Floods and Water Management", Article II. Flood Damage Prevention, of the Code of Ordinances of the City of Hialeah, Florida is replaced in its entirety with new language, which reads as follows:

Chapter 42

FLOODS AND WATER MANAGEMENT

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ARTICLE II. FLOOD DAMAGE PREVENTION*

DIVISION 1. GENERALLY

Sec. 42-26. Definitions.

In constructing the sections of this article, where the context will permit and no definition is provided in this section, the definitions provided in F.S. ch. 403 and in the rules and regulations promulgated thereunder, as may be amended from time to time, shall apply. The following words, terms and phrases, when used in this article, shall have the same meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory structure (appurtenant structure) means a structure that is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures should constitute a minimal investment, may not be used for human habitation, and be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports, storage sheds, pole barns, and hay sheds.

Addition (to an existing building) means any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a fire wall. Any walled and roofed addition which is connected by a fire wall or is separated by independent perimeter load-bearing walls is new construction.

Appeal means a request for a review of the floodplain administrator's interpretation of any provision of this article or a review of a grant or denial of a request for a variance.

Area of shallow flooding means a designated AO or AH Zone on the community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood hazard is the land in the floodplain within a community subject to a one- percent or greater chance of flooding in any given year. This term is synonymous with the phrase "special flood hazard area."

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood" and the "regulatory flood"). Base flood is the term used throughout this ordinance.

Base flood elevation means the water-surface elevation associated with the base flood.

Basement means any portion of a building having its floor sub-grade (below ground level) on all sides.

Building – see *Structure*.

Datum means a reference surface used to ensure that all elevation records are properly related. The current national datum is the National Geodetic Vertical Datum (NGVD) of 1929, which is expressed in relation to mean sea level, or the North American Vertical Datum (NAVD) of 1988.

Development means any man-made change to improved or unimproved real estate, including, but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or storage of materials or equipment.

Elevated building means a non-basement building built to have the lowest floor elevated above the ground level by foundation walls, posts, piers, columns, pilings, or shear walls.

Encroachment means the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent

structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

Existing construction means, for the purposes of floodplain management, structures for which “the start of construction” commenced before September 29, 1972.

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before September 29, 1972.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Flood or flooding means:

(a) A general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters.

(2) The unusual and rapid accumulation or runoff of surface waters from any source.

(b) The collapse or subsidence of land along a shore of a lake or other body of water as the result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a) (1) of this definition.

Flood Boundary and Floodway Map (FBFM) means the official map of the community on which the Federal

Emergency Management Agency (FEMA) has delineated the areas of special flood hazard and regulatory floodways.

Flood Hazard Boundary Map (FHBM) means an official map of the community, issued by FEMA, where the boundaries of the areas of special flood hazard have been identified as only Approximate Zone A.

Flood Insurance Rate Map (FIRM) means an official map of the community, issued by FEMA, which delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

Flood Insurance Study (FIS) means the official hydrology and hydraulics report provided by FEMA. The study contains an examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (i.e., mudflow) and other flood-related erosion hazards. The study may also contain flood profiles, as well as the FIRM, FHBM (where applicable), and other related data and information.

Floodplain means any land area susceptible to being inundated by water from any source (see definition of “flooding”).

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

Floodplain administrator is the individual appointed to administer and enforce the floodplain management regulations of the community.

Floodplain management regulations means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinance, grading ordinance, and erosion control ordinance), and other applications of police power which control development in

flood-prone areas. This term describes Federal, State of Florida, or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

Flood-proofing means any combination of structural and non-structural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Freeboard means the additional height, usually expressed as a factor of safety in feet, above a flood level for purposes of floodplain management. Freeboard tends to compensate for many unknown factors, such as wave action, blockage of bridge or culvert openings, and hydrological effect of urbanization of the watershed, which could contribute to flood heights greater than the height calculated for a selected frequency flood and floodway conditions.

Functionally dependent use means a use that cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

Hardship as related to variances from this ordinance means the exceptional difficulty associated with the land that would result from a failure to grant the requested variance. The community requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a

variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

Highest adjacent grade means the highest natural elevation of the ground surface, prior to the start of construction, next to the proposed walls of a structure.

Historic structure means any structure that is:

Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register:

- (a) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic or a district preliminarily determined by the Secretary to qualify as a registered historic district:
- (b) Individually listed on the Florida inventory of historic places, which has been approved by the Secretary of the Interior; or
- (c) Individually listed on the city inventory of historic places through the city historic preservation board.

Lowest adjacent grade means the lowest elevation, after the completion of construction, of the ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage, in an area other than a basement, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design standards of this ordinance.

Manufactured home means a building, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent

foundation when connected to the required utilities. The term also includes park trailers, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market value means the building value, which is the property value excluding the land value and that of the detached accessory structures and other improvements on site (as agreed to between a willing buyer and seller) as established by what the local real estate market will bear. Market value can be established by an independent certified appraisal (other than a limited or curbside appraisal, or one based on income approach), actual cash value (replacement cost depreciated for age and quality of construction of building), or adjusted tax-assessed values.

Mean Sea Level means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this ordinance, the term is synonymous with National Geodetic Vertical Datum (NGVD) of 1929, or North American Vertical Datum (NAVD) of 1988.

National Geodetic Vertical Datum (NGVD) of 1929 means a vertical control used as a reference for establishing varying elevations within the floodplain.

New construction means, for floodplain management purposes, any structure for which the "start of construction" commenced on or after September 29, 1972. The term also includes any subsequent improvements to such structures. For flood insurance rates, new construction means structures for which the start of construction commenced on or after September 29, 1972 and includes any subsequent improvements to such structures.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of

streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the first floodplain management code, ordinance or standard.

North American Vertical Datum (NAVD) of 1988 means a vertical control used as a reference for establishing varying elevations within the floodplain.

Program deficiency means a defect in the community's floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management regulations or of the standards required by the National Flood Insurance Program.

Public safety and nuisance means anything which is injurious to safety or health of the entire community or a neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

Reasonably safe from flooding means base flood waters will not inundate the land or damage structures to be removed from the SFHA and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

Recreational vehicle means a vehicle that is:

- (a) Built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towable by a light duty truck; and
- (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without

cumulatively increasing the water surface elevation more than a designated height.

Remedy a deficiency or violation means to bring the regulation, procedure, structure or other development into compliance with state, federal or local floodplain management regulations; or if this is not possible, to reduce the impacts of its noncompliance. Ways the impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this ordinance or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Shallow flooding – see *area of shallow flooding*.

Special flood hazard area – see *area of special flood hazard*.

Start of construction means, for other than new construction and substantial improvements under the Coastal Barrier Resources Act P. L. 97-348, includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main building. For substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other

structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means, for floodplain management purposes, a walled and roofed building, including gas or liquid storage tank that is principally above ground, as well as a manufactured home.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred "substantial damage" regardless of the actual repair work performed. This term does not, however, include any repair or improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications, which have been identified by the local code enforcement official prior to the application for permit for improvement, and which are the minimum necessary to assure safe living conditions. This term does not include any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Substantially improved existing manufactured home parks or subdivisions is where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

Variance is a grant of relief from the requirements of this article.

Violation means the failure of a structure or other development to be fully compliant with the requirements of this ordinance. A structure or other development without the elevation certificate, other certifications, or other

evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

Watercourse means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

Water surface elevation means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 or the North American Vertical Datum (NAVD) of 1988, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

X-zone means an area of minimum or moderate flood hazard above the base flood elevation, which does not meet the criteria of a Special Flood Hazard Area. For purposes of this chapter, base flood elevation in an X-zone shall be equivalent to the elevation of the crown of the road or back of sidewalk abutting a property plus eight inches for residential and four inches for non-residential properties, whichever is higher.

Sec. 42-27. Findings of fact.

(a) The flood hazard areas of the city are subject to periodic inundation, which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

(b) Such flood losses are caused in part by the cumulative effect of obstruction in flood plains causing increased in flood heights and velocities. Such flood losses are caused in part by uses in flood hazard areas vulnerable to floods or hazardous to other lands that are inadequately elevated, flood-proofed or otherwise unprotected from flood damages.

Sec. 42-28. Purpose and objectives.

(a) The purpose of this article is to save lives, promote public health, safety and general welfare, and minimum public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Restrict or prohibit uses that are dangerous to life, health, safety and property due to water or erosion hazards, which result in damaging increases in erosion or in flood heights and velocities;
- (2) Require that uses vulnerable to floods including facilities that serve such uses be protected against flood damage throughout their intended life span;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers that are involved in the accommodation of flood waters;
- (4) Control filling, grading, dredging and other development that may increase erosion or flood damage; and
- (5) Prevent or regulate the construction of flood barriers that will unnaturally divert floodwaters or that may increase flood hazards to other lands.

(b) The objectives of this article are to:

- (1) Protect human life, health and to eliminate or minimize property damage;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, roadways, and bridges and culverts located in floodplains;

(6) Maintain a stable tax base by providing for the responsible use and development of flood prone areas in such a manner as to minimize flood blight areas; and

(7) Ensure that potential homebuyers are notified that property is in a flood hazard area.

Sec. 42-29. Application of this article; compliance; interpretation; designation of floodplain administrator.

(a) This article applies to all areas of special flood hazard within the jurisdiction of the city. The provisions of this article shall be considered minimum standards and shall be liberally construed in favor of the city. This article is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this article and other provisions of the Code conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(b) The areas of special flood hazard identified by the Federal Emergency Management Agency in the Flood Insurance Study (FIS) for the city dated September 11, 2009, with the accompanying maps and other supporting data, and any subsequent revisions thereof, are adopted by reference and declared to be part of this article. The Flood Insurance Study and Flood Insurance Rate Map are on file in the planning division.

(c) The building official is the floodplain administrator and in that capacity, is empowered to administer and implement the provisions of this article.

(d) A development permit in compliance with the provisions herein shall be required prior to commencing any development activities. No structure or land shall be located, extended, converted or structurally altered without full compliance with the provisions of this article and other applicable regulations.

Sec. 42-30. Warning and liability disclaimer.

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods

can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This article does not imply that land outside the areas of special flood hazard or sues permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the city or by any officer or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder.

DIVISION 2. ADMINISTRATION

Sec. 42-40. Permit procedures.

Application for a development permit shall be made to the floodplain administrator on forms furnished by the city prior to any development activities, and may include, but not be limited to, the following plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing and proposed structures, earthen fill, storage of materials or equipment, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

(a) Application stage:

- (1) Elevation in relation to mean sea level of the proposed lowest floor (including basement) of all buildings;
- (2) Elevation in relation to mean sea level to which any non-residential building will be flood-proofed;
- (3) Certificate from a registered professional engineer or architect that the non-residential flood-proofed building will meet the flood-proofing criteria in subsection (b) herein and section 42-51(b) hereof;
- (4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development; and

(b) Construction stage:

Upon placement of the lowest floor, or flood-proofing by whatever construction means, it shall be the duty of the permit holder to submit to the floodplain administrator a certification of the NGVD or NAVD elevation of the lowest floor or flood-proofed elevation in relation to mean sea level. Such certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by surveyor or professional engineer. When flood proofing is utilized for a particular building, the certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by professional engineer or architect. Any work undertaken prior to submission of the certification shall be at the permit holder's risk. The floodplain administrator shall review the lowest floor and flood-proofing elevation survey data submitted. The permit holder immediately and prior to further progressive work being permitted to proceed shall correct violations detected by such review. Failure to submit the survey or failure to make corrections required hereby shall be cause to issue a stop-work order for the project.

Sec. 42-41. Duties and responsibilities of the floodplain administrator.

Duties of the floodplain administrator shall include, but are not limited to, the following:

- (a) Review permits to assure sites are reasonably safe from flooding;
- (b) Review all development permits to assure that the permit requirements of this article have been satisfied;
- (c) Require copies of additional federal, state or local permits, especially as they relate to ch 161.053; 320.8249; 320.8359; 373.036; 380.05; 381.0065; and 553, Part IV, F. S., be submitted along with the development permit application and maintain such permits on file with the development permit;
- (d) Notify adjacent communities, the state department of community affairs, division of emergency management, NFIP coordinating office, South Florida Water Management District, the Federal Emergency

Management Agency, and other federal and/or state agencies with statutory or regulatory authority prior to any alteration or relocation of a watercourse;

(e) Assure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained;

(f) Verify and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved buildings, according to sections 42-51(a) and (b);

(g) Verify and record the actual elevation (in relation to mean sea level) to which the new and substantially improved buildings have been flood-proofed, according to section 42-51(b);

(h) Review certified plans and specifications for compliance. When flood-proofing is utilized for a particular building, certification shall be obtained from a registered engineer or architect certifying that all areas of the building, together with attendant utilities and sanitary facilities, below the required elevation are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy in compliance with section 42-51(b) herein.

(i) Interpret the exact location of boundaries of the areas of special flood hazard. When there appears to be a conflict between a mapped boundary and actual field conditions, the floodplain administrator shall make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided herein;

(j) When base flood elevation data and floodway data have not been provided according to section 42-29(b), the floodplain administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or any

other source, in order to administer the provisions of flood hazard reduction;

(k) Coordinate all change requests to the FIS, FIRM and FBFM with the requester, State of Florida, and FEMA, and

(l) All records pertaining to the provision of this article shall be maintained in the office of the building official or planning division and shall be open for public inspection.

DIVISION 3. PROVISIONS FOR FLOOD HAZARD REDUCTION

Sec. 42-50. General standards.

In all areas of special flood hazard, all development sites including new construction and substantial improvements shall be reasonably safe from flooding, and meet the following provisions:

(a) New construction and substantial improvements shall be designed or modified and adequately anchored to prevent flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

(b) Manufactured homes shall be anchored to prevent flotation, collapse, and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable State of Florida requirements for resisting wind forces;

(c) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;

(d) New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage;

(e) Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities,

including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

(f) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems;

(g) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;

(h) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding;

(i) Any alteration, repair, reconstruction or improvements to a building that is in compliance with the provisions of this article shall meet the requirements of "new construction" as contained in this article;

(j) Any alteration, repair, reconstruction or improvements to a building that is not in compliance with the provisions of this article, shall be undertaken only if such nonconformity is not furthered, extended or replaced;

(k) All applicable additional federal, state and local permits shall be obtained and submitted to the floodplain administrator together with the application for development permit. Copies of such permits shall be maintained on file with the development permit. State permits may include, but not be limited to, the following:

(1) South Florida Water Management District: pursuant to ch. 373.036(2)(a), F. S;

(2) Department of Community Affairs: pursuant to ch. 380.05, F.S. and ch. 553, part IV F.S.;

(3) Department of Health: pursuant to ch. 381.0065, F.S.; and

(l) Standards for subdivision proposals and other new proposed development (including manufactured homes):

(1) Such proposals shall be consistent with the need to minimize flood damage;

(2) Such proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage; and

(3) Such proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(m) When proposed new construction and substantial improvements are located in multiple flood hazard risk zones or in a flood hazard risk zone with multiple base flood elevations, the entire structure shall meet the standards for the most hazardous flood risk zone and the highest base flood elevation.

(n) Any reconstruction, rehabilitation, or other improvements to a PRE-FIRM structure that is not in compliance with the provisions of this article, shall be undertaken only if the lowest floor of such noncompliance is at or above the existing lowest floor elevation, and does not constitute substantial improvement.

(o) All improvements, modifications, and/or additions to all existing structures shall be calculated cumulatively for five years from the date of the initial permit date. Additionally, all reconstruction and/or repairs to a damaged structure shall be calculated cumulatively for five years from the date of the initial permit date.

Sec. 42-51. Specific standards.

In areas of special flood hazard or within X-zones, residential and nonresidential, the following provisions are required:

(a) *Residential construction.* New construction or substantial improvement of any residential building (or manufactured home) shall have the lowest floor, including basement, elevated no lower than eight inches above the base flood elevation, the crown of the road, or back of sidewalk elevation abutting the property, whichever is

greater. If solid foundation perimeter walls are used to elevate a structure, openings sufficient to facilitate the equalization of hydrostatic forces on two sides of exterior walls in according to the standards of subsection (c) herein.

(b) *Nonresidential construction.* New construction or substantial improvement of any commercial, industrial, or nonresidential building (or manufactured home) shall have the lowest floor, including basement elevated no lower than four inches above the base flood elevation, the crown of the road, or back of sidewalk elevation abutting the property, whichever is greater. Buildings located in all A-zones may be flood proofed in lieu of being elevated provided that all areas of the building below the required elevation are watertight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in section 42-42(a)(3). An operational plan shall be included to describe the installation of the flood proofing measures.

(c) Nothing in this article shall be construed to exclude accessory buildings from this article.

(d) *Enclosures below the lowest floor.* New construction and substantial improvements that include fully enclosed areas formed by foundation and other exterior walls below the lowest floor shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.

(1) Designs for complying with this requirement must either be certified by a professional engineer or architect or meet or exceed the following minimum criteria:

a. Provide a minimum of two openings on different sides of each enclosed area having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;

b. The bottom of all openings shall be no higher than one foot above adjacent interior grade ; and

c. Openings may be equipped with screens, louvers, valves or other coverings or devices; provided that such openings provide the required net area of the openings and permit the automatic flow of floodwaters in both directions.

(2) Fully enclosed areas below the lowest floor shall solely be used for parking of vehicles, storage, and building access. Access to the enclosed area shall be minimum necessary to allow for parking of vehicles (garage door), limited storage of maintenance equipment used in connection with the premises (standard exterior door), or entry to the living area (stairway or elevator); and

(3) The interior portion of such enclosed area shall not be finished or partitioned into separate rooms.

(e) Standards for manufactured homes and recreational vehicles. All recreational vehicles must either:

(1) Be on the site for fewer than 180 consecutive days,

(2) Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions), or

(3) Meet all the requirements for new construction, including anchoring and elevation standards according to section 42-51(d)(1) and (2).

(f) Adequate drainage paths around structures shall be provided on slopes to guide water away from structures within Zone AH.

(g) Standards for waterways with established base flood elevations, but without regulatory floodways located within the areas of special flood hazard established in section 42-29(b), where streams exist for which base flood elevation data has been provided by the Federal Emergency

Management Agency (FEMA) without the delineation of the regulatory floodway (Zones AE and A1-30). The following provisions, in addition to those set forth in sections 42-51(a) through (e) shall apply:

(1) Until a regulatory floodway is designated, no new construction, substantial improvements, or other development including fill shall be permitted within the areas of special flood hazard, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(2) Development activities that increase the water surface elevation of the base flood by more than one foot may be allowed, provided that the developer or applicant first applies, with the community's endorsement, for a conditional FIRM revision, and receives the approval of FEMA.

(h) Standards for waterways with established base flood elevations and floodways located within areas of special flood hazard established in section 42-29(b), are areas designated as floodways. Since the floodway is an extremely hazardous area due to the high velocity of flood waters that carry debris, potential projectiles and have significant erosion potential, the following provisions, in addition to those set forth in sections 42-51(a) through (e) shall apply:

(1) Prohibit encroachments, including fill, new construction, substantial improvements and other developments within the regulatory floodway unless certification (with supporting technical data) by a registered professional engineer is provided through hydrologic and hydraulic analyses performed in accordance with standard engineering practice demonstrating that encroachments would not result in any increase in flood levels during occurrence of the base flood discharge.

(2) Development activities including new construction and substantial improvements within the regulatory

floodway that increase the base flood elevation may be allowed, provided that the developer or applicant first applies, with the community's endorsement, for a conditional FIRM revision, and receives the approval of FEMA.

(3) When fill is proposed, according to the permit issued by the state department of health, within the regulatory floodway, the development permit shall be issued only upon demonstration by appropriate engineering analyses that the proposed fill will not increase the water surface elevation of the base flood according to section 42-51(g)(1).

(i) Standards for manufactured homes and recreational vehicles.

(1) All manufactured homes placed or substantially improved, on individual lots or parcels, in expansions to existing manufactured home parks or subdivisions, or in substantially improved manufactured home parks or subdivisions, must meet all the requirements for new construction, including elevation and anchoring.

(2) All manufactured homes placed or substantially improved in an existing manufactured home park or subdivision must be elevated so that:

a. The lowest floor of the manufactured home is elevated no lower than one foot above the base flood elevation; or

b. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least an equivalent strength, of no less than 36 inches in height above grade.

c. The manufactured home must be securely anchored to the adequately anchored foundation system to resist flotation, collapse and lateral movement.

d. In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a

flood, any manufactured home placed or substantially improved must meet the standards of section 42-51(a) and (e).

(j) Specific standards for A-zones without base flood elevations and regulatory floodways located within the areas of special flood hazard established in section 42-29(b) where there exist A zones for which no base flood elevation data and regulatory floodway have been provided or designated by FEMA. The following provisions shall apply:

(1) Require standards of section 42-50 hereof.

(2) Require that all new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or five acres, whichever is the lesser, include within such proposals base flood elevation data. Standards set forth in section 42-51 hereof shall apply.

(3) The floodplain administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state or any other source, in order to administer the provisions of this ordinance. When such data is utilized, provisions of section 42-51 hereof shall apply. The floodplain administrator shall:

a. Obtain the elevation (in relation to the mean sea level) of the lowest floor (including the basement) of all new and substantially improved structures,

b. Obtain, if the structure has been flood-proofed according to the requirements of section 42-51(b), the elevation in relation to the mean sea level to which the structure has been flood-proofed, and

c. Maintain a record of all such information.

(4) Notify, in riverine situations, adjacent communities, the state department of community affairs, NFIP coordinating office, and the South Florida Water Management District prior to any

alteration or relocation of a watercourse, and submit copies of such notifications to FEMA.

(5) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

(6) Manufactured homes shall be installed using methods and practices that minimize flood damage. Such homes must be elevated and anchored to prevent flotation, collapse, and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

(7) When the data is not available from any source, according to the standards set forth in section 42-51(j), the lowest floor of the structure shall be elevated to no lower than three feet above the highest adjacent grade. Standards set forth in section 42-51 shall apply.

DIVISION 4. REVIEW OF FLOODPLAIN ADMINISTRATOR DECISIONS AND VARIANCES

Sec. 42-60. Floodplain administrator decisions; review

(a) *Administrative review of floodplain administrator's decisions; appellate review of final administrative action.* The mayor shall review any requirement, decision or determination made by the floodplain administrator where there is a challenge to the correctness of such decision or determination. The mayor's decision shall be considered final administrative action by the city. Any person aggrieved by the decision of the mayor shall have 30 days to seek appeal to the circuit court of the 11th judicial circuit, appellate division, by filing a petition of certiorari with the circuit court and by submitting a copy of the petition to the city clerk. The aggrieved person challenging a decision of the mayor must show special injury or standing to pursue certiorari review. Special injury or standing is satisfied if the decision adversely affects the value or development of the property owner's land or improved property or insurance rates.

(b) *Factors to be considered by de novo review by mayor.* The mayor shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:

- (1) The danger that materials may be swept onto other lands to the injury of others;
- (2) The danger of life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (4) The importance of the services provided by the proposed facility to the community;
- (5) The necessity to the facility of a waterfront location, where applicable;
- (6) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (7) The compatibility of the proposed use with existing and anticipated development;
- (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (10) The expected heights, velocity, duration, rate of rise, and sediment of transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
- (11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(12) The effect in the flood insurance rates.

Sec. 42-61. Issuance of variances.

(a) An affected property owner or person may apply for a variance of the standards or provisions of this article on a form submitted by the city together with an application fee of \$150.00.

(b) Variances shall be issued only upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief; and in the instance of a historical building, a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building variances shall only be issued when there is:

- (1) A showing of good and sufficient cause;
- (2) A determination that failure to grant the variance would result in exceptional hardship; and
- (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(c) Variances shall only be issued upon a determination that the variance is the minimum necessary deviation from the requirements of this ordinance, and in the instance of a historical building, a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building.

(d) Variances shall not be issued within any designated floodway if any impact in flood conditions or increase in flood levels during the base flood discharge would result.

(e) The floodplain administrator shall maintain the records of all variance actions, including justification for their issuance or denial, and report such variances in the community's NFIP Biennial Report or upon request to

FEMA and the state department of community affairs, NFIP coordinating office.

Sec. 42-62. Variance notification.

The floodplains administrator shall provide written notice to the applicant to whom a variance is granted that such construction below the base flood level increases risks to life and property. A copy of the notice shall be recorded by the floodplain administrator in the county public records in a form so that it appears in the chain of title of the affected parcel of land.

Sec. 42-63. Historic structures.

Variances may be issued for the repair or rehabilitation of “historic” structures upon a determination that the proposed repair or rehabilitation will not preclude the structure’s continued designation as a “historic” structure.

Sec. 42-64. Calculation of substantial improvement and damage.

(a) *Substantial improvement.* An addition or renovation shall be considered a substantial improvement when the costs of improving the structure exceed 50 percent of the market value of the building:

(1) For the purposes of this section, the costs of improvements for a project shall be obtained from one of the following sources:

- a. Detailed cost estimate from the licensed general contractor of record; or
- b. Professional construction estimation software, such as Marshall and Swift or the FEMA residential substantial damage estimation program.

(2) For the purposes of this section, the following sources will be considered acceptable estimates of market value:

- a. An independent appraisal by a professional appraiser. The appraisal must exclude the value of

the land and not use the "income capitalization approach", which bases value on the use of the property, not the structure.

b. Property appraisals used for tax assessment purposes with an adjustment recommended by the county property appraiser to reflect market conditions (adjusted assessed value).

(3) For structures in which the substantial improvement percentage is greater than or equal to 40 percent, a more precise market value may be required.

(b) *Substantial damage.* Damage to a structure, including damage from demolition, in which the cost to repair exceeds 50 percent of the market value of the building:

(1) Cost to repair a structure shall be calculated for full repair to the building before damage condition, even when the owner elects not to restore the building to its prior state. Cost to repair shall also include the cost of any improvement that the owner has opted to include during the repair project. For the purposes of this section, the cost to repair shall be obtained from one of the following objective third party sources:

- a. A licensed general contractor;
- b. Professional construction estimation software, such as Marshall and Swift or the FEMA residential substantial damage estimation program;
- c. Insurance adjustment papers; or
- d. Damage assessment field surveys conducted by building inspection, emergency management or tax assessment agencies after a disaster.

(2) For structures in which the substantial damage percentage is greater than or equal to 40 percent, a more precise market value may be required.

(c) Exclusions regarding substantial improvement. The term substantial improvement shall not, however, include alteration of historic structures provided that the alteration

will not preclude the structure's continued designation as a historic structure.

Section 2: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict. The provisions of Article II. Flood Damage Prevention, Chapter 42 of the Hialeah Code that existed prior to the adoption of this ordinance are hereby repealed and rescinded in its entirety.

Section 3: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation or suspension of licenses or permits.

Section 4: Inclusion in Code.

The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Hialeah, as an addition or amendment thereto, and the sections of this ordinance shall be renumbered to conform to the uniform numbering system of the Code.

Section 5: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent

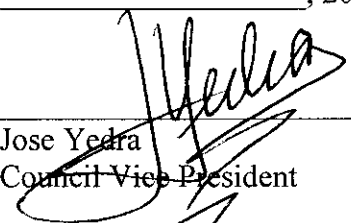
jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 6: Effective Date.

This ordinance shall become effective when passed by the City Council and when signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED AND ADOPTED this 22nd day of December, 2009.

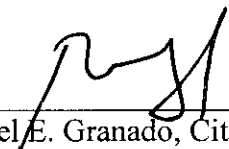
THE FOREGOING ORDINANCE
OF THE CITY OF HIALEAH WAS
PUBLISHED IN ACCORDANCE
WITH THE PROVISIONS OF
FLORIDA STATUTE 166.041
PRIOR TO FINAL READING.



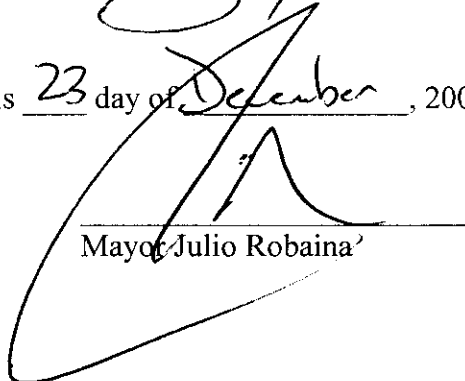
Jose Yedra
Council Vice President

Attest:

Approved on this 23 day of December, 2009.

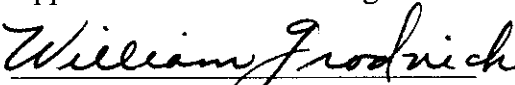


Rafael E. Granado, City Clerk



Mayor Julio Robaina

Approved as to form and legal sufficiency:



William M. Grodnick, City Attorney

*Since this language is entirely a new article, all the language shall be considered additional language without the necessity to underline each word.

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Ordinance was adopted by a 6-0 vote with Councilmembers, Caragol, Casals-Muñoz, Cue, Garcia-Martinez, Gonzalez, Yedra voting "Yes", Councilmember Hernandez absent.